

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 756 OF 2016
(Govind Ramchandra Patidar Vs. The State of Maharashtra)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri S. O. Ahmed, Advocate for the applicant.
Shri T. A. Mirza, A.P.P. for the State.

CORAM : S. B. SHUKRE, J.
DATED : SEPTEMBER 16, 2016

Heard.

Offences punishable under Sections 20, 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 are registered against this applicant and his companion in Crime No.3114/2015. The quantity of *Ganja* involved in the case is commercial. But, the question that the investigating agency must answer is – whether this applicant was having prima facie conscious possession of the contraband substance and, in the manner in which the investigation is carried out in this case, I would say, it leaves the question unanswered.

Learned Counsel for the applicant submits that the entire action relating to search and seizure of *Ganja* from the truck in question started from the reporting of an offence committed against this applicant and his companion while they were travelling by truck bearing registration No. MP-12/GA-2823. He submits that when the truck was passing through the Melghat forest, some persons attempted to rob the applicant and his associate. The applicant, somehow or the other, managed to save himself from the robbery and dacoits with the

help of the villagers. He further submits that thereafter, the informant, i.e. the applicant, went to Police Station, Dharni, gave the report and an offence punishable under Section 395 of the Indian Penal Code vide Crime No. 324/2015 came to be registered against the dacoits.

During the course of investigation in that crime, learned Counsel for the applicant submits, the police discovered the bags of Ganja kept concealed under some other articles being transported by the truck. He submits that, had this applicant any knowledge about the concealing of the contraband substance under the articles being transported by the truck, the applicant would certainly have not reported the incident of dacoity to the police for the fear of getting caught in a higher degree crime.

According to the learned A.P.P., all the mandatory requirements in this case have been complied with.

At this stage, we only have to go through the material collected during investigation. Ordinarily, the matters, which fall within the realm of defence of the accused, would not be considered while exercising the discretion under Section 439 Cr. P. C. But, at the same time, the Court is also required to appreciate the fact that the material collected by the police is sufficient for justifying the detention of the accused. Such justification would always be on the basis of prima facie consideration of the material collected by the police. By following these principles, if one considers the prosecution case, one would prima facie think that no one would believe at the first blush the story of the investigating agency that when admittedly investigation into another crime registered at the

instance of this applicant was being conducted, this applicant and his companion voluntarily disclosed to the police officer that the truck was containing *Ganja*. Except for the statement of the applicant, there is nothing available on the record on the basis of which one would say that this applicant could be said to be having prima facie knowledge about the presence of *Ganja* in his truck. Usually, no person would go to the police for reporting the crime when he knows that there is fear of his getting exposed for committing a bigger crime. Therefore, I find substance in the argument of the learned Counsel for the applicant that prima facie no conscious possession could be attributed to this applicant.

As stated earlier, there is no material present on the record, which would support the theory that this applicant too was having knowledge about the presence of *Ganja* in the truck. Thus, there being serious doubt about prima facie constituting the offence alleged against this applicant, the applicant would be entitled to be released on bail. Hence, the order.

The application is allowed and it is directed that the applicant be released on bail on his furnishing a P. R. Bond in the sum of Rs.25,000/- together with two solvent sureties in the like amount on the conditions that the applicant shall regularly attend the Court proceedings on the dates fixed in the matter, he shall cooperate the Court in expeditious disposal of the case and shall not tamper with the prosecution witnesses.

JUDGE

CERTIFICATE

“I certify that this order uploaded is a true and correct copy of original signed order.”

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